

REMARKS

This paper is being provided in response to the July 24, 2006 Office Action for the above-referenced application. The Office Action has been carefully considered. Reconsideration and allowance of the subject application, as amended, is respectfully requested.

Claims 1-3, 5, 6 and 8-16 are pending and stand rejected.

35 U.S.C. § 102 Rejection

The Examiner's rejection of the claims under 35 USC 102(b) is hereby traversed and reconsideration is respectfully requested in view of the amendments made to the claims contained herein and the following remarks.

The Examiner rejected claims 11-13 and 16 under 35 USC 102(b) as being anticipated by Ohran (USP no. 5,812,748).

Applicant disagrees with the Examiner's reason for rejecting the claims.

Ohran discloses a method for providing rapid recovery from a network file server failure through the use of backup computer system. The backup computer system runs a special mass storage access program that communicates with a mass storage emulator program on the network file server, making the disks on the backup computer system appear like they were disks on the file server computer. (See Abstract).

A claim is anticipated only if each and every element recited therein is expressly or inherently described in a single prior art reference.

Ohran cannot be said to anticipate the present invention, because Ohran fails to disclose the element of "recognizing that the network between the applications is unavailable." Rather, Ohran teaches a failover backup when a server fails and not when the network fails. The Office Action refers to col. 7, lines 20-29 of Ohran for teaching the step of recognizing that the network between the applications is unavailable. However, a reading of this section reveals that Ohran teaches monitoring the computer systems and providing backup when one computer system is determined to have failed. ("[t]he method starts in step 301, with each computer 111 and 122 waiting to detect a failure of another server's computer 111 and 122.")

Applicant believes that the reason for the rejection has been overcome and respectfully requests that the rejection be withdrawn and that claim 11 be allowed.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claims, which have been shown to be allowable over the cited references. Accordingly, the remaining claims are also allowable by virtue of their dependence from an allowable base claim.

35 U.S.C. § 103 Rejections

The Examiner's rejection of the claims under 35 USC 103(a) is hereby traversed and reconsideration is respectfully requested in view of the amendments made to the claims contained herein and the following remarks.

The Examiner rejected Claims 1-3, 5, 6, and 8-10 under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,812,748 (Ohran) in view of WO 92/18931 (Vinther).

Applicant respectfully disagrees with the reason for rejecting the claims.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, Ohran fails to teach a material element recited in the claims, as described previously, and, even if the teachings of Vinther were combined with that of Ohran, the combined device would not include all the elements claims. Vinther fails to provide any teachings that would correct the deficiency found to exist in Ohran as Vinther considers failures in the network nodes and not the network. (see, for example, page 6, line 31- page 7, line 4, “[f]ailure of the fileserver node is catastrophic since the fileserver contains information needed by a large number of nodes. Accordingly, a backup fileserver 16 is connected to the primary fileserver through a parallel port 18 to maintain a copy of all of the primary's files. Upon failure of the primary, the backup automatically assumes the role of the primary in a manner transparent to the other nodes on the network. More specifically, other nodes may continue to access the central file system without any special instruction from the users.”)

Hence, the invention recited in independent claim 1 is not rendered obvious by the references cited as neither reference teaches or suggests a material element claimed.

For at least this reason, applicant submits that the reason for the rejections of independent claim 1 has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claims, which have been shown to be allowable over the cited references.

The remaining claims are also allowable by virtue of their dependence from an allowable base claim.

In view of the foregoing, the applicant respectfully requests favorable reconsideration.

The Examiner rejected claims 11-16 under 35 U.S.C. 103 (a) as being unpatentable over Tsai (US 5,948,079) in view of Lozowick (USP no. 5,228,083).

Applicant respectfully disagrees with the Examiner's rejection of the claims.

Tsai discloses a computer network peripheral device that transfers received data packets to a storage unit of a host computer system on a nonsequential data packet portion by portion basis instead of a sequential whole data packet by whole data packet basis of the prior art. (see Abstract). Tsai, with regard to Figure 1, which is referred to in the instant Office Action, discloses a host computer 102 including a storage unit 114 and a plurality of computer systems 104, 106 and 108, in communication with a network 110 to enable computer systems 104, 106, and 108 to write to storage unit 114. (see col. 1, lines 14-44).

The Office Action states, and the applicant concurs, that Tsai fails to "teach writing packets upon unavailability of the network."

Lozowick discloses a cryptographic processing method in a communication network using a single cryptographic engine. Lozowick teaches a method in which inbound packets are stored in a buffer when the network is unavailable and its reference is being proposed to recite the claim element "in response to the unavailability of the network, writing the network information from one of the applications to a first volume." More specifically, the Office Action states that "if the connection to the network [is] unavailable but an interface [is] available, packets are transmitted out of the buffer. Therefore, one of ordinary skill in the art ... would have been motivated to modify the Tsai reference in order to increase efficiency in flow control

between the host and the peripheral and between the peripheral and the network of the Tsai reference ...”

With regard to a rejection of the claims under 35 USC 103, applicant submits that a claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, applicant would submit that should the network described by Tsai become unavailable, then application of the teachings of Lozowick is not relevant as the failure of the network 110 would prevent all communication between any of the computers 102, 104, 106 and 108. Hence, the device constructed from the teachings of Tsai and Lozowick would not have a reasonable expectation of success as the constructed device would not be operational in the case of a network failure.

For at least this reason, applicant submits that there is no motivation to combine the teachings of Tsai and Lozowick to develop the novel features recited in Claim 11.

Based on the above remarks, applicant respectfully requests favorable reconsideration and withdrawal of the rejection of Claim 11.

Claims 12-16 depend from Claim 11 and these claims are thus allowable for at least the same reasons as for Claim 11.

Based on the above, applicant respectfully requests favorable reconsideration of these dependent claims.

The Examiner rejected Claims 14 and 15 under 35 USC 103(a) as being unpatentable over Ohran (USP no. 5,812,748) in view of well known prior art.

Claims 14 and 15 depend from claim 11, which has been shown to contain subject matter not disclosed by Ohran and the well-known prior fails to correct the deficiency found to exist in Ohran.

For at least this reason, applicant submits that the rejection of these claims has been overcome and respectfully requests that the rejection be withdrawn.

Applicant: Robin Budd, *et al.*
U.S.S.N.: 09/895,466
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In view of the foregoing, applicant respectfully submits that the application is in condition for allowance and respectfully requests favorable reconsideration and withdrawal of all outstanding objections and rejections.

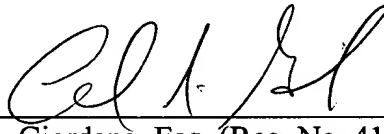
In the event the Examiner deems personal contact desirable in the disposition of this case, the Examiner is invited to call the undersigned attorney at (914) 798 8505.

No fees are believed necessary for the filing of this Amendment. However, if any fees are needed, please charge all fees occasioned by this submission to EMC Corporation Deposit Account No. 05-0889.

Respectfully submitted,

Dated: _____

10/24/04



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